

FAMILY SERVICES AND CONSUMER AFFAIRS CIRCULAR

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Alternate Program(s):

To: Community Social Service Supervisors/Program Managers

Subject: **Change to Common-Law Policy**

Reference: Section 8.1.4 Common-Law Unions

Type: Policy Replaces # 02-69 and 87-09
 Procedure
 Rate
 Information Only

Effective Date: July 1, 2010

This circular is to inform staff of changes to the common-law union policy found in section 8.1.4 of the Employment and Income Assistance (EIA) Policy Manual.

The recent Ombudsman's report on the EIA Program raised a number of concerns about the program's common-law policy, including:

- participants are not fully informed of the policy or the Department's definition of common-law at application;
- there is no process to ensure the policy is consistently applied; and
- the application of the residency factor on the first day a couple begins living together is punitive to people developing new relationships and may compromise their safety by forcing financial dependence too early.

In response to the main issues raised in the report, the policy has been changed to introduce a three-month shared residency period to allow people living together in new relationships to develop some permanence prior to considering financial and social interdependence. Both adults are still required to contribute to the costs of living together (rent, utilities, etc.), just not required to take financial responsibility for each other. Note: people who self-disclose common-law status or are the parents of a child together are considered common-law partners as soon as they begin living together.

To support application of the new policy the department is also introducing a new questionnaire to help staff consider all three factors in determining common-law status (shared residency, financial interdependence and familial/social interdependence). This new form will enhance consistency in the application of the policy and information provided to participants.

In addition, public documents will be created to inform applicants/participants of the program's definition of common-law and their rights and responsibilities as they relate to this eligibility factor by the end of August 2010.

Manitoba's new common-law policy is now comparable to many other social assistance programs in Canada.

8.1.4 COMMON-LAW UNIONS

Legislation

Under section 5(5) of *The Employment and Income Assistance Act*, common-law partners are considered to be legally married for the purposes of the EIA Program. Section 5(5) states:

"Where two persons who are not legally married to each other are living together under circumstances that indicate to the director that they are cohabiting in a conjugal relationship, they shall, for the purposes of this Act and the regulations, be treated in the same manner as two persons who are legally married, and any application by either or both of them for income assistance or general assistance shall be dealt with in every respect in that manner."

Policy

An applicant/participant must self-declare if he/she has a spouse or common-law partner.

An applicant/participant is eligible to receive income support as a single person or single parent unless he/she lives with another adult who is determined to be his/her spouse or common-law partner. When an applicant/participant has a spouse or common-law partner, they will be assessed for eligibility for income support together.

The existence of a common-law relationship is based on:

A) **Shared residency and family composition.** All married couples, self-declared common-law partners and adults that are the parents of a child together or have maintenance obligations in place for each other or the children in the household are considered spouses or common-law partners.

For all other non-familial, cohabiting relationships the program will apply the other factors of common-law status once a cumulative three months of shared residency in a six-month timeframe have passed.

plus one of the following two factors:

B) **Family/social interdependence** – the degree to which the two adults who are living together interrelate with family, friends and community as a couple rather than as two people sharing a residence.

C) **Financial interdependence** – the degree to which the two adults who are living together support each other financially.

Applicants/participants must declare any cohabitation or changes to cohabitation when they occur.

RELATIONSHIP ASSESSMENT PROCEDURE

EIA staff will determine if the applicant/participant and the other adult with whom he/she is living are spouses or common-law partners for the purposes of the EIA program using the Relationship Assessment Form (RAF). Documentation must support any decisions made using this form.

Part A of the form assesses shared residency and household composition; Part B assesses family/social interdependence and Part C assesses financial interdependence. Shared residency and one of the other two factors must be present in order to establish a common-law relationship.

- Use the RAF in cases when two or more adults are living together who are not applying together as a spouse or common-law couple.
- Use a separate form for each adult living with the applicant/participant. One form may be used for cases with multiple close relatives living together. Use the Notes section to record the details of household composition.
- EIA staff and the applicant/participant may complete the form together or it may be mailed to the applicant/participant for completion. Upon receipt of the completed form, staff must sign each part to indicate they have reviewed it for completion and assessed it for eligibility purposes.
- A copy of the signed form must be returned to the applicant/participant.

The form is completed at intake for new applications when the applicant declares co-habitation. The form does not need to be completed for new applications when the applicant self-declares he/she has a spouse or common-law partner.

For existing cases with co-habitation, the form is completed at Annual Review, whenever there is a change in co-habitation or there is a need to confirm the nature of the relationship. Once a spousal or common-law relationship is established, the form does not need to be completed again.

Steps for completing the form

1. Complete and interpret Part A – Household Composition:
 - a) If the applicant/participant indicates any of the following:
 - that the other adult he/she is living with is a spouse;
 - that the other adult he/she is living with is a common-law partner;
 - yes to question 2, (i.e. together they are parents of a child or children and are living together)
 - yes to question 3, (i.e. there is a maintenance obligation and they are living together)

then the relationship is considered marriage-like. Obtain the applicant/participant's signature at the bottom of Part A. Do not complete Parts B & C. Assess the relationship as marriage-like for the purposes of EIA.
 - b) If the applicant/participant indicates:

- the other adult is a close relative such as a: parent, step-parent, grandparent, uncle, aunt, child, step-child, grandchild, sibling, niece or nephew

then the relationship is considered familial. Obtain the applicant/participant's signature at the bottom of Part A. Do not complete Parts B & C. The relationship is not marriage-like for the purposes of EIA.

c) If the applicant/participant indicates:

- any other relationship than those listed above

then more information is needed to assess the relationship. Proceed to completing Parts B & C.

2. Complete and interpret Parts B & C:

Once the form is completed, the answers are taken together to determine if there is evidence that one of the other two factors for a marriage-like relationship exist. If so, the two adults are considered common-law partners for the purposes of EIA. If not, the applicant is considered a single person or single parent.

Decision-Making Principles and Standards

- Evidence must be weighed together to determine if the relationship is marriage-like.
- Some factors on the form may be weighed more heavily than others. Individual circumstances may also explain certain scenarios in a manner that would not indicate a common-law union.
- Sexual factors are not assessed or considered. Assessments are to be made based on financial and/or familial/social factors, not sleeping arrangements or sexual activity.

If the relationship is deemed not to be spousal or common-law, the applicant/participant's budget should be based on shared rent/shelter costs as outlined in Section 19.1.9 – Rent Sharing.

Effective Date of Change of Spousal Status

Relationship type	Effective date of change
Married couples	Date of marriage
Adults who together are the parents of a child(ren) or have a maintenance obligation	Date the two adults started living together
Self-declared common-law partners	Date spousal status began based on evidence of financial and/or familial/social interdependence
Newly assessed common-law partners	Ninety days after shared residency in a marriage-like relationship have passed*
Undeclared common-law partners	Date spousal status began based on evidence of financial and/or

*For non-familial, cohabiting relationships the program will apply the other factors of common-law status once a cumulative three months of shared residency in a six-month time-frame have passed.

Overpayments

Overpayments may be assessed and collected in situations when spousal/common-law partner status was not declared. The three-month time period for co-habitation prior to assessing a common-law union does not apply in situations of fraud.

Termination Procedures

The use of this form is to establish eligibility. If staff have sent out the form and not heard back from the participant, a decision may be made to suspend benefits pending more information. This decision must be communicated in writing and the participant must be given at least 15 days to make contact with the office. The letter should include the reason for the decision, notice of the right to appeal, and the options available if the family is in need of financial assistance or other services.

An applicant/participant may be assessed as being in a common-law relationship at the point of intake but the effective date of change to spousal status may be in the future (per the three-month policy). The effective date of his/her current case category ending is noted on the front of the RAF. If the applicant/participant does not re-apply with his/her partner at that time and the file is closed, a letter stating that benefits are ending must be sent noting the right to appeal.

If a participant requests the closure of his or her file due to a common-law relationship a letter should be sent indicating the file has been closed as per the participant's request.

Once the participant has been advised of the closure of the case, interim assistance may be provided if the participant requires assistance while appealing the case or making other arrangements for financial assistance.